

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOSHUA CHATWIN,

Plaintiff,

vs.

DRAPER CITY; OFFICER J.
PATTERSON, in his
individual and official
capacity; OFFICER DAVID
HARRIS, in his individual
and official capacity;
OFFICER HEATHER BAUGH, in
her individual and
official capacity; and
JOHN DOES 1-10,

Defendants.

Case No. 2:14-cv-00375

Judge Dale A. Kimball

VIDEOTAPED DEPOSITION OF: KIRK TORGENSEN

Taken: June 17, 2016

Reported by: Kelly Sommerville, RPR

Intermountain Court Reporters
Murray, UT 84107
(801) 263-1396



1

I N D E X

WITNESS: Kirk Torgensen

EXAMINATION BY MR. HAMILTON.....PAGE 4
EXAMINATION BY MS. MARCY.....PAGE 106

EXHIBITS:

No. 1 - Report of Expert Witness.....PAGE 6
No. 2 - E-mail, Invoice #DS048313, Letter
of Engagement.....PAGE 15

3

Intermountain Court Reporters 801.263.1396

Videotaped deposition of KIRK TORGENSEN, taken on
behalf of Defendants, at the law offices of Durham
Jones & Pinegar, 111 East Broadway, Suite 900, Salt
Lake City, Utah, on June 17, 2016, commencing at 1:31
p.m., before KELLY SOMMERVILLE, Certified Shorthand
Reporter, Registered Professional Reporter and Notary
Public in and for the State of Utah, pursuant to
Notice.

A P P E A R A N C E S

For the Plaintiff:

CLYDE SNOW & SESSIONS
Lisa A. Marcy
201 South Main Street, 13th Floor
Salt Lake City, Utah 84111

For the Defendants:

DURHAM JONES & PINEGAR, P.C.
R. Blake Hamilton
111 East Broadway, Suite 900
Salt Lake City, Utah 84111

For Draper City:

MIKE BARKER
City Attorney
1020 East Pioneer Road
Draper, Utah 84020

Also Present: Libby Lowther

2

Intermountain Court Reporters 801.263.1396

1 Salt Lake City, Utah, June 17, 2016, 1:31 p.m.

2 THE VIDEOGRAPHER: This is the videotaped
3 deposition of Kirk Torgensen in the matter of Chatwin
4 vs. Draper City, et al., being held in the law offices
5 of Durham Jones & Pinegar in Salt Lake City, Utah on
6 June 17, 2016. The time is 1:31 p.m. My name is Gavin
7 Bohne, certified legal videographer. Our court
8 reporter is Kelly Sommerville with Intermountain Court
9 Reporters. Will Counsel please state their appearances
10 for the record, and the witness will then be sworn.

11 MR. HAMILTON: Blake Hamilton on behalf of
12 the defendants.

13 MS. MARCY: Lisa Marcy for Joshua Chatwin.

14 MR. HAMILTON: And also in the room we have
15 Mike Barker on behalf of Draper City.

16 (Witness was sworn.)

17 KIRK TORGENSEN,
18 having been first duly sworn to tell the truth,
19 was examined and testified as follows:

20 EXAMINATION

21 BY MR. HAMILTON:

22 Q. Good afternoon, Mr. Torgensen. I know
23 you've taken many depositions, I'm sure. Have you
24 actually ever sat for a deposition?

25 A. I have.

4

Intermountain Court Reporters 801.263.1396

1 **A. Yes. Since 1991, I believe I started**
2 **teaching at the police academy in 1991, and did so for**
3 **the next 20-plus years. Part of that experience was**
4 **taking a look at legal issues that are associated with**
5 **police work, and I was involved in helping develop**
6 **curriculum. I was involved in drafting exams for**
7 **students to take as part of the process of being able**
8 **to go through the academy to show proficiency.**
9 **And then I spent years, and within that,**
10 **teaching students all kind of legal classes associated**
11 **with issues in police work, whether it be liability, or**
12 **search and seizure, or report writing, everything that**
13 **sort of entailed in the legal aspect of being a police**
14 **officer.**
15 **That included use of force classes. There**
16 **were several use of force classes that cadets had to**
17 **take in order to go through the curriculum. And it**
18 **specifically looked at legal issues with respect to the**
19 **use of force. What the case law and the constitutional**
20 **statutes say about the use of force, problems,**
21 **potential problems, in using certain kind of force,**
22 **sort of that whole thing.**
23 **Q.** And if you look down a couple of para -- or
24 a couple of lines after that sentence that we just
25 looked at, it says that "We discussed the

21

Intermountain Court Reporters 801.263.1396

1 constitutional issues and the case law that gives
2 guidance as to how to use" -- "how the use of force
3 would be viewed by courts and juries to determine if it
4 was reasonable."
5 Is this what you were talking about, the
6 training that you provided to the police academy?
7 **A. It is.**
8 **Q.** Okay.
9 **A. I also, within the police academy sphere, I**
10 **also taught for years in the advanced officer portion.**
11 **This is officers who have graduated in -- from the**
12 **academy, become police officers, they've typically been**
13 **in the field for five, ten, fifteen years. They have**
14 **mandatory training they have to perform every year to**
15 **keep certified. And part of that training was a use of**
16 **force aspect of their curriculum, and I taught that.**
17 **It's called the "advanced officer course," and I taught**
18 **that for the police academy for many years.**
19 **Q.** Let's talk about not the advanced training,
20 but the training that you would provide to cadets.
21 **A. Okay.**
22 **Q.** Again, according to your experience here
23 that you've listed in your report, you said that you
24 taught this for 23 years; is that correct?
25 **A. Correct.**

22

Intermountain Court Reporters 801.263.1396

1 **Q.** So what -- what years were you teaching at
2 POST?
3 **A. I think I started in 1991, and I think I**
4 **taught at the academy until -- well, just with -- with**
5 **the basic program, probably 2015, maybe --**
6 **Q.** Okay.
7 **A. -- end of 2014.**
8 **Q.** And you would agree with me that during
9 that period of time that cadets are taught -- or were
10 taught those things that you lay out in that sentence,
11 correct?
12 **A. Correct.**
13 **Q.** For example, when you were instructing the
14 academy -- and you would agree with me that you were
15 instructing the academy when Officer Patterson actually
16 went through the academy, true?
17 **A. Probably true, yes.**
18 **Q.** And so you would agree that he would have
19 been trained regarding the constitutional requirements
20 regarding the use of force in the academy?
21 **A. There was a class that specifically focused**
22 **on that, yes.**
23 **Q.** So in that class that specifically focused
24 on that, you would agree that he received training
25 regarding those constitutional requirements, true?

23

Intermountain Court Reporters 801.263.1396

1 **A. I don't know if I could guarantee it, if I**
2 **didn't do it, but it certainly -- it certainly was a**
3 **course that was required for each cadet to take, and so**
4 **I would assume, yes.**
5 **Q.** And you would agree that during that time,
6 he would have also been taught about statutory
7 requirements regarding the use of force, true?
8 **A. True.**
9 **Q.** And you would agree that he would have
10 learned about the case law that gives guidance
11 regarding the use of force?
12 **A. Yes.**
13 **Q.** And you would agree that he would have been
14 taught how courts view the use of force and whether
15 it's reasonable or not?
16 **A. True.**
17 **Q.** And you would agree that he would have
18 received instructions on how juries view the use of
19 force and whether it's reasonable or not?
20 **A. True.**
21 **Q.** And so he would have been trained what use
22 of force was reasonable in the academy, true?
23 **A. He would have been trained on the concepts**
24 **of what the standard was and particularly how juries**
25 **and courts looked at how an officer does or does not**

24

Intermountain Court Reporters 801.263.1396

<p>1 meet that standard.</p> <p>2 Q. And so he would have been trained</p> <p>3 specifically on what use of force would be considered</p> <p>4 to be reasonable?</p> <p>5 A. True.</p> <p>6 Q. And how that analysis would take place?</p> <p>7 A. True.</p> <p>8 Q. If you go to the next page of your report,</p> <p>9 the first full paragraph on that page, you have a</p> <p>10 sentence that starts on the third line, it says "I</p> <p>11 explained." Do you see that?</p> <p>12 A. The first full paragraph?</p> <p>13 Q. Yes, the first full paragraph --</p> <p>14 A. Uh-huh, I do.</p> <p>15 Q. -- on that page. That sentence says "I</p> <p>16 explained the need for policy and procedure to be</p> <p>17 straightforward and simple," and there's a comma there.</p> <p>18 I'd like to talk about that.</p> <p>19 You would agree with me that police</p> <p>20 policies should be simple. They should be able -- an</p> <p>21 officer should be able to understand them, correct?</p> <p>22 A. They should be straightforward, correct.</p> <p>23 Q. Okay. And your language here is simple,</p> <p>24 "straightforward and simple," true?</p> <p>25 A. What I meant by simple is that it needs to</p> <p style="text-align: right;">25</p> <p style="text-align: center;"><i>Intermountain Court Reporters 801.263.1396</i></p>	<p>1 joined the deposition, just so her appearance is on the</p> <p>2 record.</p> <p>3 Q. So the question I was asking was, did you</p> <p>4 -- have you had any experience where you've seen an</p> <p>5 officer where there's been a policy that's been clear,</p> <p>6 and yet they have not followed that policy?</p> <p>7 A. I have.</p> <p>8 Q. Have you ever had personal experiences</p> <p>9 where you've been accused of not following a simple</p> <p>10 policy?</p> <p>11 A. I have not had a personal experience where</p> <p>12 that's been claimed, no.</p> <p>13 Q. Okay. Have you ever had a personal</p> <p>14 experience where it's been claimed that you haven't</p> <p>15 followed a specific state statute?</p> <p>16 A. Well, I want to be fair and clear about</p> <p>17 this. I was -- as a chief deputy in the attorney</p> <p>18 general's office for 13 years, there were lawsuits</p> <p>19 filed against the attorney general's office that I was</p> <p>20 named in, a lot of employment type of lawsuits, or</p> <p>21 those kind of things, and so I guess the answer to that</p> <p>22 is yes. It's --</p> <p>23 Q. With -- with respect to state statutes?</p> <p>24 A. I don't know specifically with respect to</p> <p>25 state statutes, but certainly legal issues that were</p> <p style="text-align: right;">27</p> <p style="text-align: center;"><i>Intermountain Court Reporters 801.263.1396</i></p>
<p>1 be understandable to the individual who is reading it.</p> <p>2 Not simple in the sense that's it's lacking, but simple</p> <p>3 in the sense that it's straightforward enough so that</p> <p>4 the person reading it can understand what the intent</p> <p>5 is.</p> <p>6 Q. Right. You wouldn't want to have a policy</p> <p>7 that was convoluted?</p> <p>8 A. Correct.</p> <p>9 Q. You would want it to be straightforward,</p> <p>10 like you just said, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And you would want it to be simple enough</p> <p>13 that they could grasp the concept, true?</p> <p>14 A. True.</p> <p>15 Q. And you would agree with me that even</p> <p>16 though you can have a good policy, it doesn't mean that</p> <p>17 the policy itself will be followed, true?</p> <p>18 A. True.</p> <p>19 Q. Have you ever had any experience with that,</p> <p>20 where you've seen officers where the policy was clear</p> <p>21 and yet their actions didn't follow the policy?</p> <p>22 (Libby Lowther entered deposition.)</p> <p>23 A. I --</p> <p>24 MR. HAMILTON: And let me just stop you</p> <p>25 there. Just for the record, Libby Lowther has just</p> <p style="text-align: right;">26</p> <p style="text-align: center;"><i>Intermountain Court Reporters 801.263.1396</i></p>	<p>1 raised in lawsuits.</p> <p>2 Q. Let's look down to the next paragraph. It</p> <p>3 says "As the chief deputy attorney general for 14" --</p> <p>4 "13 years, I had the responsibility to create policy</p> <p>5 and procedure office wide."</p> <p>6 I'd like to understand what policies you</p> <p>7 actually created. Can you recall any of the policies,</p> <p>8 the specific policies, you created in your position?</p> <p>9 A. Sure. We had -- really, when I became the</p> <p>10 chief deputy, the AG's office really was sort of</p> <p>11 lacking in policy. And so we ended up developing much</p> <p>12 better policies over the course of that time. I was</p> <p>13 involved in some of the -- we had a Law Enforcement</p> <p>14 Bureau, where he had, I think, 30 sworn officers who</p> <p>15 worked for the attorney general's office. I was</p> <p>16 involved in looking and improving policies with respect</p> <p>17 to that, which ran the whole gamut from search and</p> <p>18 seizure, use of force, evidence collection.</p> <p>19 We had policies that we adopted that I was</p> <p>20 very, very involved with, with respect to management,</p> <p>21 and what was expected of man -- expected of management.</p> <p>22 So we had all kinds of policies that we ended up</p> <p>23 adopting.</p> <p>24 Q. During your period of time, do you recall</p> <p>25 specifically working on the use of force policy for the</p> <p style="text-align: right;">28</p> <p style="text-align: center;"><i>Intermountain Court Reporters 801.263.1396</i></p>

1 **Q.** But, again, during that period of time,
2 again, same questions that I asked with respect to your
3 time at the Utah attorney general's office. Do you
4 have any recollection of actually physically making,
5 you personally, making any changes to the use of force
6 policy?
7 **A.** I -- I -- I would guarantee you that that
8 happened at Adult Probation & Parole. If those changes
9 were sitting down with somebody and saying, "This
10 doesn't look right or this needs to be changed," those
11 discussions happened all the time.
12 **Q.** Okay. With respect to the use of force
13 policy at the AG's office, again, you've been critical
14 of the use of force policy with respect to Draper City
15 that was in place in 2010, correct?
16 **A.** Correct.
17 **Q.** And with respect to your rebuttal report,
18 and we haven't looked at that yet, and we can mark it
19 as an exhibit, if you need to, but you also opined
20 about something that Mr. Wallentine talked about in his
21 report, where he talked about the chiefs' association
22 getting together and making changes to use of force
23 policies throughout the state. Do you remember that?
24 **A.** I do.
25 **Q.** And do you recall earlier, when you were

37

Intermountain Court Reporters 801.263.1396

1 talking about the use of force policy at the attorney
2 general's office, you said that you had some
3 recollection of Ken Wallentine talking to you about the
4 need to change policies in kind of a nationwide change
5 with respect to use of force policy?
6 **A.** I don't know if it was nationwide, but I do
7 recall the whole discussion. There were a number of
8 issues. It wasn't just use of force. There were a
9 number of critical law enforcement issues that we were
10 trying to engage in with the sheriffs' association or
11 the chiefs' association. And I -- yeah, I recall those
12 discussions about the need to -- to look at improving
13 what was in place.
14 **Q.** Okay. I want to talk specifically, though,
15 about the use of force policy, and let me just cut to
16 the chase here. In 2010, it's true that the use of
17 force policy at the attorney general's office was
18 almost identical to the use of force policy in Draper
19 City?
20 **A.** I don't know that. I know that your expert
21 has said that. I have not independently verified that.
22 **Q.** Okay. You wouldn't be here today telling
23 me that the use of force policy, where you were the
24 division chief or the chief deputy, and the buck at
25 least came to your desk as one of the higher-ups in

38

Intermountain Court Reporters 801.263.1396

1 management, was unconstitutional, correct?
2 **A.** If, in fact, the policy at the attorney
3 general's office in 2010 was similar to the one in
4 Draper, I would say that that policy was inadequate.
5 And if that's the fact, that's the fact.
6 **Q.** And let's not -- let's not quibble about
7 terms, but language is important, and so I want to talk
8 specifically about whether it was constitutional or
9 unconstitutional. Would you say that that policy was
10 unconstitutional in 2010 at the AG's office, where you
11 were in charge, if it was indeed identical to Draper
12 City's?
13 **A.** If it -- the problem with the policy is
14 that it is so bare bones, and it is so -- it states the
15 conclusion that force has to be reasonable. And in my
16 many years of experience, that is not sufficient to
17 guide somebody in what it means, how to comport
18 yourself with it. If that was true and that's what the
19 AG policy said, I think it was lacking in giving the
20 direction and the guidance to officers in the AG's
21 office of what was expected of them, and if that's the
22 way it was, then that's the way it was.
23 **Q.** But you would agree with me that in 2010,
24 that the Draper City policy, and again, if -- if the
25 AG's office policy was similar or identical to it, did

39

Intermountain Court Reporters 801.263.1396

1 correctly state the law in Utah, true?
2 **A.** It recited the state statute which said
3 that force had to be reasonable.
4 **Q.** And that's a correct statement of Utah
5 state statute at that point in time, true?
6 **A.** It was a correct statement of the law.
7 **Q.** Okay. And not only was it a correct
8 statement of state law, but that state statute and
9 federal law were consistent with respect to use of
10 force, true?
11 **A.** I don't understand.
12 **Q.** That use of force, again, this is from your
13 report here, if you flip over to the next page, you can
14 look at the exact language, second full paragraph
15 underneath your opinions, the language you used there
16 is that "The 2010 use of force policy in place at the
17 time of the incident simply cites the Utah state
18 statute which states that force may be used which is
19 reasonably believed to be necessary to effect an
20 arrest. In other words, the officers are told simply
21 to use force that is reasonable."
22 And, sir, you would agree with me that that
23 is the standard with respect to use of force. Force --
24 when you use force as an officer, it has to be
25 reasonable, true?

40

Intermountain Court Reporters 801.263.1396